

1 UNITED STATES DEPARTMENT OF TRANSPORTATION
2 DEPT OF TRANSPORTATION OFFICE OF HEARINGS
3 DOCKETS WASHINGTON D.C.
4

5 JUN 24 -2 P 1:24 V. LAKE CHELAN AIR SERVICES
6

7 (Civil Penalty Action)
8 FAA CASE NO. 2005NM050004
9

10 DOCKET NO. CPCP09NM0007
11

12 JUDGE RICHARD C. GOODWIN
13
14

RECEIVED

JUN 30 2009

HEARING DOCKET

FAA 2009-0096

15
16 REPLY TO RESPONDENT'S MOTION TO DISMISS
17

18 Complainant, through her undersigned counsel, hereby responds to Respondent's
19 Motion to Dismiss and respectfully requests the Motion be stricken or denied pursuant to 14
20 CFR §§ 13.207(c), 14 CFR 13.208, and 14 CFR 13.218(f)(2).
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23 A. RESPONDENT'S MOTION FAILS TO ARTICULATE GROUNDS UPON
24 WHICH RELIEF CAN GRANTED AND SHOULD BE STRICKEN.
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26 Respondent cites as grounds for dismissal the allegation that Complainant "improperly
27 cited" Respondent because the FAA had "granted deviations under . . . 14 CFR § 119.71" and
28 because portions of the case arose more than two years after the notice in his case was issued.
29 The latter allegation is simply wrong and will be addressed separately below.
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32 The first statement, however, is too vague and unsupported to merit any consideration
33 and should simply be stricken. Respondent states in a conclusory fashion that the FAA
34 granted a deviation for its employee to act as both director of safety and chief pilot, and
35 therefore, the case should be dismissed. No legal analysis of any kind is provided supporting
36 the motion, nor is any relevant supporting legal authority cited. The only authority cited to
37 support this motion is 14 CFR 207. That rules states:
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40 "(a) Signature required. The attorney of record, the party, or the party's representative shall sign each
41 document tendered for filing with the hearing docket clerk, the administrative law judge, the FAA
42 decisionmaker on appeal, or served on each party.
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1 (b) Effect of signing a document. By signing a document, the attorney of record, the party, or the party's
2 representative certifies that the attorney, the party, or the party's representative has read the document
3 and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the
4 document is--
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6
7 (1) Consistent with these rules;
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10 (2) Warranted by existing law or that a good faith argument exists for extension, modification, or
11 reversal of existing law; and
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13
14 (3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to
15 cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any
16 other improper purpose.
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19 (c) Sanctions. If the attorney of record, the party, or the party's representative signs a document in
20 violation of this section, the administrative law judge or the FAA decisionmaker shall:
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23 (1) Strike the pleading signed in violation of this section;
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26 (2) Strike the request for discovery or the discovery response signed in violation of this section and
27 preclude further discovery by the party;
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30 (3) Deny the motion or request signed in violation of this section;
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33 (4) Exclude the document signed in violation of this section from the record;
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36 (5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the
37 appeal until an initial decision has been entered on the record; or
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39
40 (6) Dismiss the appeal of the administrative law judge's initial decision to the FAA decisionmaker."
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42
43 Respondent utterly fails to explain how 14 CFR § 207 requires that the relief
44 requested be granted. One can only guess that Respondent intends to argue some
45 deficiency in regard to subsections a) or b). Assuming, *arguendo* only, some such
46 violation occurred, dismissal of the entire case pending for hearing is notoriously absent as
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1 a listed sanction available to the ALJ. Accordingly, the Motion must be denied or stricken
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3 pursuant to 14 CFR § 207(c)(1).¹
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5 **B. NO BASIS EXISTS FOR DISMISSAL PURSUANT TO 14 CFR § 13.208.**
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7 Respondent likewise contends that Complainant violated 14 CFR § 13.208 by
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9 bringing this case in an untimely fashion in violation of the “stale complaint rule.” That rule
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11 states, in its pertinent part:
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15 (d) Motion to dismiss allegations or complaint. Instead of filing an answer to the complaint, a
16 respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation
17 that occurred on or after August 2, 1990, and more than 2 years before an agency attorney issued a
18 notice of proposed civil penalty to the respondent.
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20
21 (1) An administrative law judge may not grant the motion and dismiss the complaint or part of the
22 complaint if the administrative law judge finds that the agency has shown good cause for any delay
23 in issuing the notice of proposed civil penalty.
24

25 (2) If the agency fails to show good cause for any delay, an administrative law judge may dismiss
26 the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years
27 before an agency attorney issued the notice of proposed civil penalty to the respondent.
28

29 (3) A party may appeal the administrative law judge's ruling on the motion to dismiss the complaint
30 or any part of the complaint in accordance with § 13.219(b) of this subpart.
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32 All of the violations or events underlying the allegations occurred well within the two year
33 period specified in 14 CFR § 13.208(d)(3). See Section II-B of the Complaint. The
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35 events of 2006, referenced in Respondent's Motion, are not part of the Complaint or this
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37 case. This claim is equally as frivolous as the first claim, discussed above, and should be
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39 denied or stricken for the same reasons.
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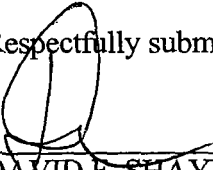
52 ¹ It is tempting to speculate that Respondent intended to bring a Motion on the Pleadings or a Motion for
53 Summary Judgment alleging some sort of estoppel theory. If Respondent wishes to do so, it should. This
motion *sub judice* in no way, shape, or form remotely resembles any such motion nor does it comply with the
applicable rules for same. See generally, 14 CFR § 218(f)(2) and (5). At any rate, Complainant firmly
denies that it ever granted a “deviation” relating to the violations alleged in its Complaint, and likewise

1 **CONCLUSION**

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3 Respondent's Motion is meritless and frivolous, it fails to provide any legal analysis
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5 supporting its requested relief or provide even a basic explanation of its legal theory. It
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7 likewise fails to cite to any factual basis for its requested relief. Particularly, the claim for
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9 violation of the stale complaint rule is completely unfounded and contrary to the plain
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11 language of the Complaint. Ironically, it is Respondent who, by bringing this unfounded
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13 motion, has violated 14 CFR § 13.207.
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17 Accordingly, Respondent's motion must be stricken or denied.
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23 Respectfully submitted:

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27 DAVID F. SHAYNE
28 FAA Attorney
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30 June 23, 2009
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denies that any form of estoppel argument would have merit, and is prepared to address that argument if and when it is properly brought.

CERTIFICATE OF SERVICE

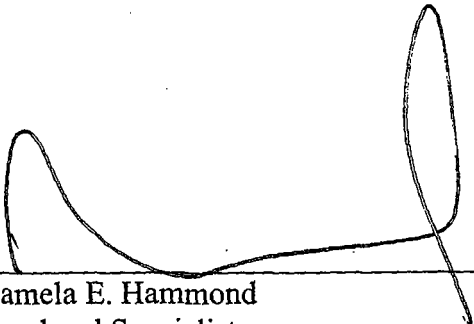
I hereby certify that the foregoing Reply to Respondent's Motion to Dismiss has been served via facsimile and mailed this date by certified mail, return receipt requested, to:

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Dated this 24th day of June 2009.



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